

Filed for intro on 02/05/2001

HOUSE BILL 713

By Bowers

AN ACT to amend Tennessee Code Annotated, Title 4 and Title 50,
relative to employment protection for battered women.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. This act may be cited as the "Battered Women's Employment Protection Act".

SECTION 2. The purposes of this act are:

(1) To promote the public interest in reducing domestic violence by enabling victims of domestic violence to maintain the financial independence necessary to leave abusive situations, achieve safety, and minimize the physical and emotional injuries from domestic violence, and to reduce the devastating economic consequences of domestic violence to employers and employees, by--

(A) providing unemployment insurance for victims of domestic violence who are forced to leave their employment as a result of domestic violence; and

(B) entitling employed victims of domestic violence to take reasonable leave to seek medical help, legal assistance, counseling, and safety planning and assistance without penalty from their employers;

(2) To protect the civil and economic rights of victims of domestic violence and further the equal opportunity of women for employment and economic self-sufficiency;

(3) To minimize the negative impact on commerce from dislocations of employees and harmful effects on productivity, health care costs, and employer costs, caused by domestic violence; and

(4) to accomplish the purposes described in paragraphs (1), (2), and (3) in a manner that accommodates the legitimate interests of employers.

SECTION 3. Tennessee Code Annotated, Section 50-7-302(b), is amended by adding the following as a new subdivision (5);

(5) Compensation is to be provided where an individual is separated from employment due to circumstances directly resulting from the individual's experience of domestic violence as defined in Section 4-21-409.

SECTION 4. Tennessee Code Annotated, Title 50, Chapter 7, Part 3, is amended by adding the following as a new section:

Section 50-7-306.

(a) For purposes of Section 50-7-302(b)(5), an employee's separation from employment shall be treated as due to circumstances directly resulting from the individual's experience of domestic violence if the separation resulted from:

(1) the employee's reasonable fear of future domestic violence at or en route to or from the employee's place of employment;

(2) the employee's wish to relocate to another geographic area in order to avoid future domestic violence against the employee or the employee's family;

(3) the employee's need to recover from stress resulting from the employee's experience of domestic violence; or

(4) any other circumstance in which domestic violence causes the employee to reasonably believe that termination of employment is necessary for the future safety of the employee or the employee's family.

(b) For purposes of Section 50-7-302(a)(5), to the extent Section 56-7-303(a) requires the employee to have made reasonable efforts to retain employment as a condition for receiving unemployment compensation, such requirement shall be met if the employee:

(1) sought protection from, or assistance in responding to, domestic violence, including calling the police or seeking legal, social work, medical, clerical, or other assistance;

(2) sought safety, including refuge in a shelter or temporary or permanent relocation, whether or not the employee actually obtained such refuge or accomplished such relocation; or

(3) reasonably believed that options such as taking a leave of absence, transferring jobs, or receiving an alternative work schedule would not be sufficient to guarantee the employee or the employee's family's safety.

(c) For purposes of Section 50-7-302(a)(5), to the extent Section 50-7-302(a)(4) and (8), requires the employee to actively search for employment after separation from employment as a condition for receiving unemployment compensation, such requirement shall be treated as met where the employee is temporarily unable to actively search for employment because the employee is engaged in seeking safety for the employee or the employee's family, or relief for the employee, from domestic violence, including:

(1) going into hiding or relocating or attempting to do so, including activities associated with such hiding or relocation, such as seeking to obtain

sufficient shelter, food, schooling for children, or other necessities of life for the employee or the employee's family;

(2) actively pursuing legal protection or remedies, including meeting with the police, going to court to make inquiries or file papers, meeting with attorneys, or attending court proceedings; or

(3) participating in psychological, social, or religious counseling or support activities to assist the employee in coping with domestic violence.

(d)

(1) In determining if an employee meets the requirements of subsection

(c) the department may require the employee to provide:

(A) a written statement describing the domestic violence and its effects;

(B) documentation of the domestic violence, such as a police or court record, or documentation from a shelter worker, an employee of a domestic violence program, an attorney, a member of the clergy, or a medical or other professional, from whom the employee has sought assistance in addressing domestic violence and its effects, as defined in Section 4-21-409; or

(C) other corroborating evidence, such as a statement from any other individual with knowledge of the circumstances that provide the basis for the claim of domestic violence, or physical evidence of domestic violence, such as a photograph, torn, or bloody clothing, or any other damaged property.

All evidence of domestic violence experienced by an employee, including a statement of an employee, any other documentation or corroborating evidence, and the fact that an employee has applied for, or inquired about, unemployment compensation available by reason of Section 50-7-302(a)(5), shall be retained in the strictest confidence by the settlement, except to the extent that disclosure is requested; or consented to, by the employee for the purpose of protecting the safety of the employee or a family member of the employee or of assisting in documenting domestic violence for a court or agency.

(2) The department's methods of administration as will ensure that claims reviewers and hearing personnel are adequately trained in the nature and dynamics of domestic violence and in methods of ascertaining and keeping confidential information about possible experiences of domestic violence, so that employee separations stemming from domestic violence are reliably screened, identified, and adjudicated, and full confidentiality is provided for the employee's claim and submitted evidence.

SECTION 5. Tennessee Code Annotated, Title 4, Chapter 21, Part 4, is amended by adding the following as a new section:

Section 4-21-409.

(a) As used in this section:

(1) "Addressing domestic violence and its effects" means:

(A) being unable to attend or perform work due to an incident of domestic violence;

(B) seeking medical attention for or recovering from injuries caused by domestic violence;

(C) seeking legal assistance or remedies, including communicating with the police or an attorney, or participating in any legal proceeding, related to domestic violence;

(D) obtaining services from a domestic violence shelter or program or rape crisis center as a result of domestic violence;

(E) obtaining psychological counseling related to experiences of domestic violence;

(F) participating in safety planning and other actions to increase safety from future domestic violence, including temporary or permanent relocation; and

(G) participating in any other activity necessitated by domestic violence that must be undertaken during the hours of employment involved.

(2) "Domestic violence" means acts or threats of violence, or acts of extreme cruelty (as such term is referred to in Section 216 of the Immigration and Nationality Act (8 U.S.C. 1186a)), not including acts of self-defense, committed by --

(A) a current or former spouse of the victim;

(B) a person with whom the victim shares a child in common;

(C) a person who is cohabiting with or has cohabited with the victim;

(D) a person who is, or has been, in a continuing social relationship of a romantic or intimate nature with the victim;

(E) a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction; or

(F) any other person against whom a victim is protected from that person's acts under the domestic or family violence laws of the jurisdiction.

(b) An employee who has been employed by the same employer for at least twelve (12) consecutive months as a full-time employee may be absent from such employment for a period not to exceed four (4) months for the following reasons:

(1) In order to care for the son, daughter, or parent of the employee, if such son, daughter, or parent is addressing domestic violence and its effects; or

(2) Because the employee is addressing domestic violence and its effects, which make the employee unable to perform the functions of the position of such employee.

(c) Leave under this section may be taken by an eligible employee intermittently or on a reduced leave schedule. The taking of leave intermittently or on a reduced leave schedule pursuant to this subsection shall not result in a reduction in the total amount of leave to which the employee is entitled under law beyond the amount of leave actually taken.

(d) In determining if an employee meets the requirements of subsection (b), the employer of an employee may require the employee to provide:

(1) a written statement describing the domestic violence and its effects;

(2) documentation of the domestic violence involved, such as a police or court record, or documentation from a shelter worker, an employee of a domestic violence program, an attorney, a member of the

clergy, or a medical or other professional, from whom the employee has sought assistance in addressing domestic violence and its effects; or

(3) other corroborating evidence, such as a statement from any other individual with knowledge of the circumstances that provide the basis for the claim of domestic violence, or physical evidence of domestic violence, such as a photograph, torn or bloody clothing, or any other damaged property.

(e) All evidence provided to the employer under subsection (d) of domestic violence experienced by an employee or the son, daughter, or parent of an employee, including a statement of an employee, any other documentation or corroborating evidence, and the fact that an employee has requested leave for the purpose of addressing, or caring for a son, daughter, or parent who is addressing domestic violence and its effects, shall be retained in the strictest confidence by the employer, except to the extent that disclosure is requested, or consented to, by the employee for the purpose of:

(1) protecting the safety of the employee or a family member or co-worker of the employee; or

(2) assisting in documenting domestic violence for a court or agency.

SECTION 6. Tennessee Code Annotated, Title 50, Chapter 1, Part 1, is amended by adding the following as a new section:

(a) In this section:

(1) The term "addressing domestic violence and its effects" has the meaning given the term in Section 4-21-409(a).

(2) "Employee" means any person employed by an employer. In the case of an individual employed by a public agency, such term means

an individual employed as described in section 3(e) of the Fair Labor Standards Act of 1938 (29 U.S.C. 203(e)).

(3) "Employer"

(A) means any person engaged in commerce or in any industry or activity affecting commerce who employs individuals, if such person is also subject to the Family and Medical Leave Act of 1993 (29 U.S.C. 2601 et seq.), or to any provision of State or local law, collective bargaining agreement, or employment benefits program or plan, addressing paid or unpaid leave from employment (including family, medical, sick, annual, personal, or similar leave); and

(B) includes any person acting directly or indirectly in the interest of an employer in relation to any employee, and includes a public agency, who is subject to a law, agreement, program, or plan described in subparagraph (A), but does not include any labor organization (other than when acting as an employer) or anyone acting in the capacity of officer or agent of such labor organization.

(4) "Employment benefits" has the meaning given the term in Section 101 of the Family and Medical Leave Act of 1993 (29 U.S.C. 2611).

(5) The terms "parent" and "son or daughter" have the meanings given the terms in section 101 of the Family and Medical Leave Act of 1993 (29 U.S.C. 2611).

(6) "Public agency" has the meaning given the term in Section 3 of the Fair Labor Standards Act of 1938 (29 U.S.C. 203).

(b) An employee who is entitled to take paid or unpaid leave (including family, medical, sick, annual, personal, or similar leave) from employment, pursuant to state or local law, a collective bargaining agreement, or an employment benefits program or plan, shall be permitted to use such leave for the purpose of addressing domestic violence and its effects, or for the purpose of caring for a son or daughter or parent of the employee, if such son or daughter or parent is addressing domestic violence and its effects.

(c) In determining whether an employee qualifies to use leave as described in subsection (b), an employer may require a written statement, documentation of domestic violence, or corroborating evidence consistent with Section 4-21-409(d).

(d) All evidence provided to the employer under subsection (c) of domestic violence experienced by an employee or the son or daughter or parent of the employee, including a statement of an employee, any other documentation or corroborating evidence, and the fact that an employee has requested leave for the purpose of addressing, or caring for a son or daughter or parent who is addressing domestic violence and its effects, shall be retained in the strictest confidence by the employer, except to the extent that disclosure is requested, or consented to, by the employee for the purpose of (1) protecting the safety of the employee or a family member or co-worker of the employee; or (2) assisting in documenting domestic violence for a court or agency.

(e)

(1)

(A) It shall be unlawful for any employer to interfere with, restrain, or deny the exercise of, or the attempt to exercise, any right provided under this section.

(B) It shall be unlawful for any employer to discharge or in any other manner discriminate against an individual for opposing any practice made unlawful by this section.

(2) It shall be unlawful for any person to discharge or in any other manner discriminate against any individual because such individual:

(A) has filed any charge, or had instituted or caused to be instituted any proceeding, under or related to this section;

(B) has given, or is about to give, any information in connection with any inquiry or proceeding relating to any right provided under this section; or

(C) has testified, or, is about to testify, in any inquiry or proceeding relating to any right provided under this section.

(f)

(1) Any employer who violates the provisions of this section shall be liable to the employee or employees affected in the amount of their unpaid wages or other compensation denied or lost to the employee by reason of the violation, and in instances of willful violation in employee suits under subdivision (2) up to an additional equal amount as liquidated damages.

(2) Action to recover such wages may be maintained in any court of competent jurisdiction by any one (1) or more employees. The court shall, in cases of violation, in addition to any judgment awarded to the plaintiff or plaintiffs, allow a reasonable attorney's fee to be paid by the defendant and cost of the action.

(3) At the written request of any employee claiming to have been denied the leave to which the employee is entitled under this section, the commissioner of labor and workforce development may bring any legal action necessary in behalf of the employee to collect such claim for such unpaid wages, to restrain violations of this section or other appropriate equitable relief. The commissioner shall not be required to pay any filing fee, or other cost in connection with such action. The commissioner shall have the power to join various claims against the employer in one (1) cause of action.

(4) Nothing in this section shall be construed to limit the liability of an employer to an employee for harm suffered relating to the employee's experience of domestic violence pursuant to any other federal or state law, including a law providing for a legal remedy.

SECTION 7.

(a) Nothing in this act or the amendments made by this act shall be construed to supersede any provision of any other law, collective bargaining agreement, or other employment benefits program or plan that provides greater unemployment compensation or leave benefits for employed victims of domestic violence than the rights established under this act or such amendments.

(b) The rights established for employees under this act, or the amendments made by this act, shall not be diminished by any local law, collective bargaining agreement, or employment benefits program or plan.

SECTION 8. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the

act which can be given effect without the invalid provision or application, and to that end the provisions of this act are declared to be severable.

SECTION 9. This act shall take effect January 1, 2002, the public welfare requiring it.